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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th August 2013

No. 10880—li-I(B)-14/2003-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th June 2013 in Industrial Dispute Case No. 15 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Lift Irrigation Division, Kendrapara and their Workman Shri Sanatan Mallick was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 15 OF 2003

Dated the 29th June 2013

Present :

S.A.K.Z. Ahamed,
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The Executive Engineer, . . . First Party—Management
Lift Irrigation Division, At/P.O./Dist. Kendrapara.

And

Shri Sanatan Mallick . . . Second Party—Workman
S/o Late Kinu Mallick, At/P.O. Nial,
Via Aul, Dist. Kendrapara.

Appearances :

Shri Yudhisthira Das, Senior Clerk . . . For the First Party—Management

Shri Sanatan Mallick . . . For the Second Party—Workman
himself.

AWARD

The Government of Odisha in the Labour & Employment Department (presently the Labour & E.S.I. Department) in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 2820—li-1(B)-14/2003-LE., dated the 22nd March, 2003.

“Whether the termination of services of Shri Sanatan Mallick, Ex-D. L. R. Watcher with effect from the 31st August 2001 by the Executive Engineer, Lift Irrigation Division, Kendrapara is legal and/or justified ? If not, what relief is Shri Mallick entitled to ?”

2. The case of the workman, in short, is that being engaged under the Management as a D. L. R. Watchman, he had performed his duty continuously without any break for the period from the 29th December 1997 to the 30th August 2001, It is alleged that although he had rendered uninterrupted service under the Management for more than three and half years, yet the Management disengaged him with effect from the 31st August 2001 without following the procedure laid down under the Industrial Disputes Act, inasmuch as, neither he was served with one month's prior notice nor he was paid notice pay in lieu thereof and retrenchment compensation as required under the provisions of Section 25-F of the Industrial Disputes Act.

The workman has further asserted that one Shri Ashok Kumar Prusty, who is junior to him is retained in employment while he was disengaged and thereby the Management has violated the provisions of Section 25-G of the Industrial Disputes Act. According to him, the action of the Management being in clear violation of the provisions of the Industrial Disputes Act, he is entitled to reinstatement in service with full back wages and other benefits.

3. The Management filed its written statement admitting about the engagement of the workman from the 1st September 1997 to the 30th August 2001 but stated that he was engaged as a contract labourer in the Lift Irrigation Division, Kendrapara and his engagement was not continuous one.

It is averred that the engagement of the workman as a contract labourer was under a time bound scheme and on closure thereof his services stood terminated automatically. Under the circumstance, the Management has stoutly denied to have violated the provisions of Section 25-F of the Industrial Disputes Act.

As regards the complaint of the workman regarding violation on the provisions of Section 25-G of the Industrial Disputes Act, the Management pleaded in its written statement that Shri Ashok Kumar Prusty was never engaged as a contract labourer and therefore, the workman's claim that Shri Prusty is junior to him is not tenable.

4. Basing on the pleadings, the following issues have been framed :—

ISSUES

- (i) Whether the termination of services of Shri Sanatan Mallick, Ex-D. L. R. Watcher with effect from the 31st August 2001 by the Executive Engineer, Lift Irrigation Division, Kendrapara is legal and/or justified ?
- (ii) If not, what relief is Shri Mallick entitled to ?”

5. In order to substantiate his stand, the workman examined himself and filed and proved two documents which have been marked as Exts. 1 & 2, Similarly, the Management examined Shri Yudhisthira Das, a Senior Clerk as M. W. No. 1 and filed and proved documents which have been marked as Exts. A to C/7.

FINDINGS

6. *Issue No. (i)* It is not in dispute that the workman was performing duty as a watchman under the Management from the 29th December 1997 to the 30th August 2001 and with effect from the 31st August 2001, he was disengaged from employment. While the management takes a plea that the workman was engaged on contractual basis and that too under a particular scheme and on closure of such scheme, his services automatically got terminated, the workman refuting such assertions has taken the stand that he was never engaged under any scheme nor his service was contractual in nature. Further, the workman has contended that in order to avoid the regours of the provisions of the Industrial Disputes Act, the Management has stated all falsehood in the matter of his engagement under it. In view of the contradictory stand, it is to be thrashed out first as to whether the workman was directly employed under the Management or he was employed as a contract labourer throughout the period as mentioned above.

7. The workman seems to have filed a copy of the Attendance Register in this Court on the 17th April 2013. Though it has not been marked as an exhibited documents, but it appears therefrom that the concerned Junior Engineer has certified the same on the 1st January 1999 to be the Attendance Register, Entries made therein disclose that the workman has rendered continuous service under the management till the 31st August 2001. Apart from that, the document marked Ext. A. basing on which the Management has termed the engagement of the workman to be a contractual engagement under a scheme cannot be relied on in absence of his initial appointment order indicating therein that his services would be automatically terminated on expiry of the term of such scheme. The settled principle of law being that a worker should be made aware of the fact that his employment is short lived and he would face the consequence after the term is over, the document Ext. A which has been cited to show that his (workman's engagement was under a scheme), in my considered view, is of no help to the Management. Further, the absentee statements, marked Exts. C to C/7 disclose that the workman was all along attending to his duties under the

concerned Junior Engineer without any break. The documentary evidence read together with the evidence of workman clearly establishes that he was working under the Management as a D. L. R. Watchman and his such engagement was not at all against any scheme nor his services were utilised through any third party, i. e. contractor.

8. Interruption in the workman's service for the period from the 29th December 1997 till the 30th August 2001 having not been shown by the Management, it is held that he has rendered more than 240 days of continuous service under the Management and therefore he was entitled to the protection envisaged under Section 25-F of the Industrial Disputes Act. There being admitted non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, the action of the Management is held to be neither legal nor justified.

9. The other ground raised by the workman in the matter of non-compliance of the provisions of Section 25-G of the Industrial Disputes Act is not at all substantiated through adequate evidence, inasmuch as, the workman has failed to establish that Shri Ashok Kumar Prusty is junior to him and he has been retained in service ignoring his seniority.

10. *Issue No. (ii)* In view of the finding that the action of the Management is neither legal nor justified, the workman is entitled to some relief. Taking into consideration the status of the workman, his length of employment and the fact that he was not engaged through any selection process, I am not inclined to pass any order for his reinstatement and for the same reason to award any back wages in his favour. However, in lieu thereof this Court feels it appropriate to grant him some compensation and accordingly a sum of Rs. 1,00,000 (Rupees One Lakh) only is awarded in favour of the workman which should be paid to him within a period of one month from the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

S. A. K.Z. AHAMED
29-06-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
29-06-2013
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government